

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLAN K. MARSHALL	:	CIVIL ACTION
	:	
v.	:	
	:	
PORTFOLIO RECOVERY ASSOCIATES,	:	
INC. and JOHN GING	:	NO. 09-0307-JF

MEMORANDUM

Fullam, Sr. J.

November 30, 2009

The plaintiff (an attorney, proceeding *pro se*) filed a form complaint in the Philadelphia Municipal Court, seeking damages pursuant to the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and a Pennsylvania statute. The defendants removed the case to this Court and have now filed a motion for summary judgment, to which the plaintiff filed a belated response.

An earlier motion to dismiss was denied because the plaintiff alleged that the defendants wrongly attempted to collect an alleged debt from the plaintiff, and failed to provide meaningful identification. It now appears, from the requests for production of documents that the plaintiff served on defendants and other information included in the summary judgment motion, that the telephone call in question was not an attempt to collect a debt from the plaintiff, but was instead a communication regarding a client of the plaintiff. For the reasons explained by my colleague Judge O'Neill in a related case, communications between debt collectors and consumers' attorneys are not subject

to the Fair Debt Collection Practices Act. See Marshall v. Portfolio Recovery Associates, Inc., Civil Action No. 09-0306 slip op. (E.D. Pa. Aug. 12, 2009). The plaintiff does not even mention this decision in his response, let alone attempt to distinguish it from the present action.

Defendants seek counsel fees pursuant to 15 U.S.C. § 1692k(a)(3) and Federal Rule of Civil Procedure 11. I find, as did Judge O'Neill, that there is no evidence that the action was filed in bad faith. However, after Judge O'Neill issued his ruling (from which no appeal was taken), defense counsel wrote to the plaintiff, requesting that he withdraw this action. Although the plaintiff should have addressed Judge O'Neill's ruling in his response, I am not persuaded that sanctions are appropriate at this time.

An order will be entered.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

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INC. and JOHN GING	:	NO. 09-307

ORDER

AND NOW, this 30th day of November 2009, upon
consideration of Defendants' Motion for Summary Judgment, and the
response thereto,

IT IS hereby ORDERED that the Motion is GRANTED IN PART
AND DENIED IN PART as follows:

1. The claim under the Fair Debt Collection Practices
Act and that claim is DISMISSED WITH PREJUDICE.
2. The "state act" claim is DISMISSED WITHOUT
PREJUDICE.
3. The motion for sanctions is DENIED.
4. The Clerk is directed to mark the case-file
CLOSED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.